

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1711 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRANAV PRABHA SHRIVAHAL

Versus

DALICHAND CHHAGANLAL

Appearance:

MS SUDHA R GANGWAR for Petitioners
MR GIRISH D BHATT for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The present judgement and order is delivered in the context of my earlier orders dated 4th August 2000, 11th August 2000 and 25th August 2000. The same are already on record and therefore I do not propose to reproduce the same.

2. Mrs. Sudha Gangwar, learned counsel for the petitioners, states that she does not have the papers of the present case and is therefore unable to assist the Court in the matter. In the circumstances I now proceed to deal with the matter on the basis of the record.

3. This is a revision under section 29(2) of the Bombay Rent Act at the instance of the original tenants (defendants) in the suit.

4. The facts of the case and the judgement and order impugned in the present revision viz. the decision of the Revisional Bench in Revision Applications No.34/83 and 36/83 clearly indicates that the trial court, while dealing with HRP Suit No.1664/79, decided the landlord's application Exh.34 for determination of interim rent (and gave incidental directions) at Rs.275/- per month. The trial court also gave directions to the tenant to deposit Rs.5000/- in the court. Both the landlord and the tenant were aggrieved by this order and consequently the defendants-tenants preferred Revision Application No.34/83, and the landlord preferred Revision Application No.36/83, which was heard and decided by the lower revisional court by common judgement and order.

5. It is this common judgement and order and particularly the decision in revision application no.34/83, which is the subject matter of the present revision.

6. In my view, the present revision application under section 29(2) of the Bombay Rent Act is not maintainable.

7. Section 29 of the said Act reads as under:

"29. (1) * * *

(2) No further appeal shall lie against any decision in appeal under sub-section (1) but the High Court may, for the purpose of satisfying itself that any such decision in appeal was according to law, call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit.

(3) Where no appeal lies under this section from a decree or order in any suit or proceeding [in the City of Ahmedabad the bench of two judges, specified in clause (a) of sub-section (1) and elsewhere] the District Court may for the purpose

of satisfying itself that the decree or order made was according to law, call for the case in which such decree or order was made and pass such order with respect thereto as it thinks fit."

A plain reading of sub-section (2) in conjunction with sub-section (3) leads to two conclusions. Firstly, sub-section (2) permits the High Court to entertain a revision, but such revision lies only from a decision in appeal under sub-section (1). Obviously in the present proceedings, what is impugned is not any decision rendered by the lower court in an appeal under section 29(1). What is in fact impugned in the present proceedings is a judgement and order delivered by the lower court while exercising jurisdiction under section 29(3). Obviously no revision lies to the High Court from any decision rendered by the lower court under section 29(3). This revision is, therefore, incompetent and deserves to be rejected on this ground alone.

8. Even otherwise, I find that there is no substance on the merits of the matter.

9. It would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

10. What requires to be noted in particular is that the lower court has merely determined the interim rent and issued consequential directions to the tenant, for the pendency of the suit. The trial court is yet to decide the suit, is yet to decide whether the tenant is liable to pay the taxes and if so what is the amount. Thus, the rights of the parties are not finally decided

even under the impugned judgement and order.

11. Even otherwise, having carefully perused the impugned judgement and order passed by the lower revisional court, I find that it is completely in consonance with the appreciation of the evidence on record and the conclusions drawn therefrom are eminently justifiable and require to be confirmed.

12. On the sum total of consideration of the above factors I find that the present revision is without any substance and deserves to be dismissed. Accordingly this revision is dismissed. Rule is discharged with costs. Interim relief stands vacated.

13. The Registry is directed to send back the record and proceedings to the trial court forthwith i.e. not later than 8th September 2000.

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